

REMARKS

Applicants submit this Reply in response to the non-final Office Action mailed March 22, 2011.

Prior to this response, claims 38-40, 42-57, and 59-74 were pending, of which claims 38 and 55 are independent. In the Office Action, the Examiner applied 35 U.S.C. § 101 to reject claim 74 as allegedly being directed to non-statutory subject matter. The Examiner further applied 35 U.S.C. § 103(a) to reject claims 38-50, 52-67, and 69-76 as being unpatentable over U.S. Patent Publication No. 2001/0001268 ("Menon") in view of European Patent No. 1304831 ("Korhonen") and to reject claims 51 and 68 over Menon in view of Korhonen and further in view of the document labeled JADE: Java Agent Development Framework ("Bellifemine").¹

In this response, Applicants have amended claims 38, 55, and 74 and canceled claim 44 without prejudice or disclaimer. No new matter has been added. Accordingly, claims 38-40, 42, 43, 45-57, and 59-74 are currently pending.

Applicants respectfully traverse the pending rejections for at least the following reasons.

Rejection of Claim 74 Under 35 U.S.C. § 101

Claim 74 stands rejected under 35 U.S.C. § 101 because the "instant claims do not specify for the 'computer readable medium' to be non-transitory computer readable medium." Office Action at 5. In response, Applicants have amended claim 74 to be in

¹ The Office Action contains a number of statements characterizing Applicants' disclosure, including the claims, and the related art. Regardless of whether any such statement is specifically addressed herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

the form suggested by the Examiner. More specifically, claim 74 has been amended to recite “[a] non-transitory computer-readable medium storing a computer program product for execution by a processor, the computer program product comprising....” Applicants therefore respectfully request the Examiner’s reconsideration and withdrawal of the 35 U.S.C. § 101 rejection of claim 74.

Rejection of Claims 38-50, 52-67, and 69-76 Under 35 U.S.C. § 103(a)

In the Office Action, claims 38-50, 52-67, and 69-76 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonen.² Claim 44 has been canceled, rendering moot its rejection. Amended claims 38 and 55 are the only independent claims included in this claim rejection under Section 103(a). Applicants respectfully traverse the rejection of independent claims 38 and 55, as amended at least because Menon and Korhonen fail to disclose or render obvious their subject matter.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See M.P.E.P. § 2142. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *Id.* In this application, a *prima facie* case of obviousness has not been established because the scope and content of the prior art have not been properly ascertained, see M.P.E.P. § 2141, and thus, a reason why the prior art would render obvious the claims has not been articulated.

Independent claims 38 and 55, as amended, recite either an architecture or method for monitoring quality of service in a telecommunication network including a set

² Claims 41 and 58 were previously cancelled without prejudice or disclaimer of their subject matter. Accordingly, the rejection of these claims under 35 U.S.C. § 103(a) is moot.

of mobile terminals having “at least one measuring agent configured to interface with processes selected from a group of processes for managing application sessions of said telecommunication network and processes executed by the mobile terminal for directly measuring operating conditions of said telecommunications network.”

Applicants respectfully submit that neither Menon nor Korhonen teach or suggest at least these features of Applicants’ amended independent claims.

The Office Action correctly concedes that Menon fails to teach or suggest the above-recited feature of Applicants’ independent claims. See Office Action at 18 (“Menon does not specifically disclose ... interfac[ing] with processes selected from a group of processes among processes for managing application sessions of said telecommunication network and process for measuring operating conditions of said telecommunication network to derive therefrom a set of measurement data.”) (emphasis removed). However, the Examiner applies Korhonen to allegedly cure the deficiencies of Menon. This is not correct. Korhonen, like Menon, fails to teach or suggest “at least one measuring agent configured to interface with processes selected from a group of processes for managing application sessions of said telecommunication network and processes executed by the mobile terminal for directly measuring operating conditions of said telecommunications network” as recited by Applicants’ amended independent claims 38 and 55.

Korhonen generally discloses “a method and system for distributing, transferring and monitoring QoS [Quality of Service] data in a packet-switched mobile communication network.” Korhonen ¶ [0001]. In this system, “QoS data obtained from the UMTS QoS components is transmitted to a monitoring agent MA,” where MAs exist

in “the user equipment UE, in the RNC [of the radio access network], and in the SSGN ... and GGSN [each of the core network].” *Id.* ¶ [0021]. Importantly, “[t]he monitoring agent MA in a mobile station UE adds a QoS header field [to an IP packet transmitted from the UE to the other network components] according to the QoS wanted by the user....” *Id.* ¶ [0026]. The monitoring agents of the radio access network and the core network then add QoS values, if necessary, to the IP packet, and eventually “[t]he packet provided with updated QoS data [is received by] the mobile station UE....” *Id.* ¶ [0028]. At this point, the monitoring agent can “pre-process and refine QoS data into a form suited for applications.” *Id.* ¶ [0021]. “These activities include e.g. the calculation of transfer rate, standard deviations and calculation of percentages e.g. in loss of packets.” *Id.*

As shown above, instead of disclosing “at least one measuring agent configured to interface with ... processes executed by the mobile terminal for directly measuring operating conditions of said telecommunications network” as recited by Applicants’ amended independent claims 38 and 55, Korhonen discloses that a user equipment’s monitoring agent requests quality of service data from another network element and then receives that quality of service data so the monitoring agent can process it. Korhonen ¶¶ [0021]-[0028]. Stated otherwise, Korhonen appears to contain no disclosure that its user equipment’s monitoring agent “directly measur[es] operating conditions of said telecommunication network,” as recited by Applicants’ amended independent claims. Thus, Korhonen does not teach or suggest “at least one measuring agent configured to interface with ... **processes executed by the mobile**

terminal for directly measuring operating conditions of said telecommunications network” as recited by Applicants’ amended independent claims 38 and 55.

Claims 38 and 55, as amended, also are patentably distinguishable from the cited art in that they require that “said at least one measuring agent is further configured to measure the load state of the mobile terminal and of the telecommunication network and to adapt processing, management and collection of the measurement data to the load state measured.” Portions of this subject matter have been incorporated from now-canceled claim 44.

As amended, claims 38 and 55 address, among other things, an architecture and method for monitoring QoS which is able to adapt itself to the scenario in which the monitoring should be performed. As recited in the amended claims, the measuring agent is “configured to measure the load state” and “to adapt processing, management and collection of the measurement data to the load state measured.” The cited art does not disclose or render obvious this subject matter.

In rejecting now-canceled claim 44, which recited the measuring agent being “configured to measure the load state” and “to adapt a monitoring of quality of service in said telecommunication network to the measured load state,” the Examiner cited paragraphs [0170], [0182], and [0370] of Menon. See Office Action at 13. Those citations are unsupportable for rejecting either now-canceled claim 44 and, particularly, amended claims 38 and 55. Specifically, Menon’s paragraph [0170] discusses collecting subscriber information in a registration procedure such as “data for subscriber provisioning and billing” or “services the subscriber has requested,” unrelated to the measuring a load state as claimed. Paragraph [0182] refers to storing historical

subscription activity information, which may include “subscribers’ usage, in time, of services,” a teaching distinct from “measur[ing] a load state” for the network. And rather than disclose “adapt[ing] processing, management and collection of the measurement data to the load state measured,” Menon’s paragraph [0370] discusses a completely different subject: “adaptation” with respect to “coordinating, or otherwise interworking” between different signaling procedures (H.323 and GSM). In short, these citations to Menon amount to little more than collecting key words from Applicants’ claims in the reference and are inadequate to support a *prima facie* rejection under Section 103.

Accordingly, neither Menon nor Korhonen teaches or suggests the subject matter recited by independent claims 38 and 55, as amended, and as would be required by each of dependent claims 39, 40, 42, 43, 45-50, 52-54, 56, 57, and 59-74. The Examiner has therefore neither properly ascertained the scope and content of the prior art nor articulated a reason why the prior art would render the claims obvious, and a *prima facie* case of obviousness has not been established. Applicants therefore respectfully request the withdrawal of the Section 103 rejection of claims 38-40, 42, 43, 45-57, and 59-74 and their timely allowance.

Rejection of Claims 51 and 68 Under 35 U.S.C. § 103(a)

In the Office Action, claims 51 and 68 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonen and further in view of Bellifemine. Claims 51 and 68 depend from amended independent claims 38 and 55, respectively, which are allowable over Menon in view of Korhonen for at least the reasons outlined above. Bellifemine does not remedy the deficiencies of Menon and Korhonen outlined above, because it also fails to disclose or render obvious “at least one measuring agent

configured to interface with processes selected from a group of processes for managing application sessions of said telecommunication network and processes executed by the mobile terminal for directly measuring operating conditions of said telecommunications network," as recited by Applicants' amended independent claims 38 and 55. Therefore, the 35 U.S.C. § 103(a) rejection of dependent claims 51 and 68 cannot be maintained and should be withdrawn.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: June 22, 2011

/R. Bruce Bower/
By: _____
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